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November 15, 1983

Dr. Neal D. Andrew, Deputy Commissioner
Department of Education
410 State House Annex
Concord, New Hampshire 03301

Dear Dr. Andrew:

You have asked me to review your response regarding an employee of the Department of Education who was injured on a rest break. The question presented by your request concerns whether an off-premises injury occurring while an employee is on a rest break is an injury occurring within the "course of employment." You state that Section 7.2 of the Collective Bargaining Agreement provides that rest breaks are part of the working hours. From this you conclude that because employees are not generally permitted off-premises during working hours, that an injury occurring off-premises during a rest break would be non-compensable on the ground that the injury did not occur in the course of employment, or arise out of employment.

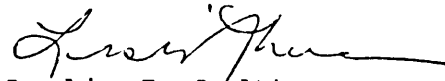
Under New Hampshire workmen's compensation law, an injury occurring off-premises during working hours may be compensable, even though the injury occurred while the employee was engaging in personal errands. Whitham v. Gellis, 91 N.H. 226 (1940). In determining whether an injury occurred in the course of employment or arose out of employment, courts appear to focus on whether the practice is expressly forbidden, or whether it is anticipated that employees will engage in off-premises activity. While Section 7.2 of the Contract provides that break time shall be considered work time, it does not prohibit employees from leaving the premises during this time.



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Furthermore, there is no provision in the contract that can be interpreted as establishing a policy forbidding employees to leave the premises during break periods. If you would like to institute a policy forbidding employees from leaving the premises, this policy should be made clear, by publication and notice. At this point, the Collective Bargaining Agreement does not establish this as a general policy.

Very truly yours,



Leslie J. Ludtke
Assitsant Attorney General
Division of Legal Counsel

LJL/smg
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